

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. ) Criminal Action No.:  
 ) 2:16cr36  
GERALD DARBY, )  
 )  
Defendant. )

TRANSCRIPT OF PROCEEDINGS

(Sentencing)

Norfolk, Virginia  
December 15, 2016

BEFORE: THE HONORABLE ROBERT G. DOUMAR  
United States District Judge

Appearances:

OFFICE OF THE UNITED STATES ATTORNEY  
By: LESLIE FISHER, ESQUIRE  
ELIZABETH YUSI, ESQUIRE  
Counsel for the United States

OFFICE OF THE FEDERAL PUBLIC DEFENDER  
By: RODOLFO CEJAS, ESQUIRE  
Counsel for Defendant

The Defendant appearing in person.

P R O C E E D I N G S

(Proceedings commenced at 10:07 a.m. as follows:)

COURTROOM DEPUTY CLERK: Criminal Case No. 2:16cr16,  
the United States of America v. Gerald Andrew Darby.

Ms. Fisher, Ms. Yusi, is the government ready to  
proceed?

MS. FISHER: Yes, we are. I am. Good morning, Your  
Honor.

COURTROOM DEPUTY CLERK: Mr. Cejas, is your client  
ready to proceed?

MR. CEJAS: Yes, we are. Good morning, Your Honor.

THE COURT: Good morning, Mr. Cejas.

Mr. Darby, if you will come forward to the podium with  
your lawyer, Mr. Cejas?

Mr. Darby, first, it would be my -- it's indicated you  
pled guilty previously, Mr. Darby, subject to the motion to  
suppress, and it was a conditional plea, conditioned thereby.  
It is the finding of this Court in the case of United States v.  
Gerald Darby that the defendant is fully competent and capable  
of entering an informed plea to Count 1 of this indictment, and  
that his plea of guilty is a knowing and voluntary plea  
supported by an independent basis in fact containing each of the  
essential elements of the offense. The Court therefore accepts

1 this conditional guilty plea, conditioned upon the question of  
2 the motion to suppress. Is that correct, Mr. Cejas?

3 MR. CEJAS: Yes, sir, Your Honor.

4 THE COURT: As to Count 1 of this criminal indictment.  
5 And I do find him guilty.

6 Now, Mr. Darby, this is a sentencing hearing. At this  
7 hearing, you have the right to present a sworn or an unsworn  
8 statement before sentence is imposed. You have an opportunity  
9 to have your lawyer speak for you or to present any letters,  
10 writings, witnesses or documents or anything of any kind that  
11 you think might be helpful to the Court in announcing the  
12 sentence to be imposed upon you. Do you understand your rights  
13 before sentence is imposed?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: Now, Mr. Darby, you can have a seat and  
16 I'll hear from Mr. Cejas, then I'll hear from Ms. Fisher and  
17 then I'll come back to Mr. Cejas.

18 MR. CEJAS: Thank you, Your Honor.

19 THE COURT: Mr. Cejas, you have objected to the  
20 finding, inconclusive finding of whomever conducted the --

21 MR. CEJAS: Your Honor, I don't really have any case  
22 law to support that position, we just believe that it was not  
23 appropriate, necessarily, to include that within the presentence  
24 report. And I think that we would simply ask the Court to, as  
25 the Court looks at that, to look at that certainly in the

1 context of all the other facts that are listed in the  
2 presentence report, particularly his mental health state prior  
3 to that time, and even since that time. So...

4 THE COURT: Well, I understand, Mr. Cejas. The  
5 testing is absolutely essential. I do, I believe that Mr. Darby  
6 is not a pedophile. I'm not concerned about that at all.

7 MR. CEJAS: Yes, sir.

8 THE COURT: And since I am the sentencing judge,  
9 that's the important portion of what that report would be for.

10 MR. CEJAS: Yes, sir.

11 THE COURT: I don't think it matters that much later  
12 on. This case is interesting, very interesting, Mr. Cejas, in  
13 that Mr. Darby is obviously an individual of high intelligence  
14 who was placed in the Navy in an isolated situation dealing with  
15 the nukes and the nuclear energy program. And it's odd, because  
16 that program evidently causes people to get involved in the  
17 inner workings of the Internet. And it's not the first case  
18 we've had in this regard.

19 MR. CEJAS: Yes, sir.

20 THE COURT: So consequently I'm fully aware of it.  
21 And I'm fully aware that Mr. Darby suffered as a child. And the  
22 question of the isolation situation, without being hard on Mr.  
23 Darby, is the situation of the necessity of having a great deal  
24 of psychological work that should be done.

25 But let me hear from Ms. Fisher, because --

1 MR. CEJAS: Yes, sir.

2 THE COURT: -- I'm inclined to take all of that into  
3 consideration. You know, when we look at Title 18, Section 3553  
4 and we look at the various requirements, it's a serious offense  
5 because it keeps these people in business who provide --

6 MR. CEJAS: Yes, sir.

7 THE COURT: -- this material. As far as affording  
8 adequate deterrence to criminal conduct, I don't think it deters  
9 anybody, because nobody knows about it other than the fact --  
10 they have no idea when they're dealing with this on the Internet  
11 that it's even criminal. That's what's so disturbing. They  
12 have an idea that it's secret, but they don't necessarily have  
13 any idea that it's criminal. And so when we get into Title 18  
14 Section 3553, we get into this problem. There is no question  
15 that we've got to protect the public from further crimes of this  
16 defendant, but the further crimes is looking at more of this  
17 material, and therefore aiding in its publication --

18 MR. CEJAS: Yes, sir.

19 THE COURT: -- by virtue of the fact that he pays for  
20 it.

21 What is needed is a lot of medical care. Psychiatric  
22 care.

23 MR. CEJAS: Yes, sir.

24 THE COURT: It worries me, because what is happening  
25 throughout the country is becoming evident: That we are filling

1 about somewhere close to 30 percent of the prisons of the United  
2 States with people who, years ago, would have been placed in a  
3 mental institution and tried to provide rehabilitation efforts  
4 through the medical society. And to me, that is not what a  
5 prison is for. In reading Mr. Darby's presentence report, you  
6 cannot help but understand how he got into that position.

7 MR. CEJAS: Yes, sir.

8 THE COURT: He certainly was maligned as a child and  
9 sort of rejected by society, or felt rejected by society. And I  
10 can understand that. The problem is that he was a highly  
11 intelligent individual, and that's why he got into the nuclear  
12 program in the Navy.

13 MR. CEJAS: Yes, sir.

14 THE COURT: But let me hear from Ms. Fisher. Because  
15 the way that these cases work is they add everything, you know?  
16 They just overemphasize the additions under the sentencing  
17 guidelines.

18 But Ms. Fisher, what do you recommend in this case?

19 MS. FISHER: Your Honor, the government recommends a  
20 within-guidelines sentence for Mr. Darby. The defendant has  
21 requested a mandatory minimum sentence here, but this is not a  
22 mandatory minimum case if you look at the underlying facts.

23 THE COURT: Tell me why it isn't, Ms. Fisher.

24 MS. FISHER: Your Honor, the defendant, if you look at  
25 the nature of the images the defendant specifically was looking

1 at, he had a large number of images and videos, but what was  
2 actually in those images and video is particularly disturbing.  
3 He had images, a lot of images that involved bondage, children  
4 whose wrists were bound, children who were tied to walls.  
5 Images of prepubescent children being both vaginally and orally  
6 penetrated by adult men. And he was using sophisticated  
7 software. He was using Tor software to anonymize his identity  
8 to avoid detection.

9 THE COURT: Ms. Fisher, how much of that is due to the  
10 Japanese theories that have been invoked in this case or that  
11 begin to appear in these cases where that sort of bondage and  
12 violence is so prevalent in that country, evidently? What do  
13 you feel is the advantage of a sentence within what you call the  
14 guidelines, which are merely advisory -- or I think now because  
15 of the reversal that there's no question that they're purely  
16 advisory -- and so everybody treats them as if you've got to  
17 follow them. So you contend that they're mandatory?

18 MS. FISHER: No, Your Honor, they are advisory. But  
19 they are a good place to start for an appropriate sentence.  
20 And --

21 THE COURT: So they're good place to start. Okay. So  
22 let's start. What else did you use in coming to the conclusion  
23 which you came to, Ms. Fisher?

24 MS. FISHER: Well, Your Honor, as I already spoke to,  
25 the disturbing nature of what the defendant was looking at, the

1 particularly violent nature of the images --

2 THE COURT: Well, that goes without saying. I  
3 understand that.

4 MS. FISHER: And Your Honor, these --

5 THE COURT: What else did you look at?

6 MS. FISHER: These types of crimes, while they may  
7 appear to take place merely on the Internet, they don't actually  
8 occur in a vacuum. These images and videos are real children,  
9 and each image of video --

10 THE COURT: There's no question that if they weren't  
11 real children, Ms. Fisher, we wouldn't be here. So let's forget  
12 all of that. Let's get on to what it is that differs this case  
13 from just looking at pornography of children, which in and of  
14 itself is horrible, no question about it, but what else have you  
15 considered in making your recommendation?

16 MS. FISHER: Well, just what I've already said, Your  
17 Honor: The disturbing, violent nature of images, the use of Tor  
18 to hide his identity --

19 THE COURT: You said that.

20 MS. FISHER: Well, nothing --

21 THE COURT: Ms. Fisher, understand me: What else have  
22 you, other than the violent nature of the pictures?

23 MS. FISHER: That's, that concludes what I was going  
24 to say, Your Honor, those three things.

25 THE COURT: Well, what are the factors in Title 18

1 Section 3553; that is, that you have to look at the history and  
2 characteristics of the defendant. Did you do that?

3 MS. FISHER: Yes, Your Honor. And the defendant  
4 admitted that he's been doing this for three or four years. So  
5 this is not an isolated incident, he's been doing this for a  
6 number of years.

7 THE COURT: So the fact that he's been doing it for a  
8 number of years does not take into consideration any of the  
9 characteristics: What he is, who he is, his intelligence or  
10 lack of intelligence, what he's done, what was he doing, what  
11 has society done. Is society partly to blame for all of this?  
12 Where do we go and where do we end?

13 I'm very concerned, Ms. Fisher, concerning where we're  
14 going with these cases. Initially I followed the guidelines,  
15 and then I began to realize that they don't take into  
16 consideration the factors that are there. How do we afford  
17 adequate deterrence to criminal conduct? Tell me about it.  
18 What?

19 MS. FISHER: An appropriately long sentence, Your  
20 Honor. I think that --

21 THE COURT: Who does this deter?

22 MS. FISHER: It deters both future offenders and it  
23 deters the defendant from --

24 THE COURT: Well, how do future offenders know it? Do  
25 you think anybody knows about this case? Have you ever seen one

1 in the newspaper?

2 MS. FISHER: Yes, Your Honor, I have seen articles in  
3 the newspaper about cases like this.

4 THE COURT: I've never seen a single case of  
5 receipt -- not pedophile cases -- but I've never seen a single  
6 case of receipt ever hit the newspaper. Maybe you can refer me  
7 to one, Ms. Fisher. Name. Give me a name.

8 MS. FISHER: I don't know if there's been an article  
9 about a single count of receipt. I know I've had a previous  
10 case that involved online child pornography that the trial was  
11 covered by the number.

12 THE COURT: The problem I'm concerned about is  
13 shouldn't there be some requirement by Congress to require  
14 warnings to be given on the Internet to people concerning the  
15 utilization of this type of material? Wouldn't that help,  
16 rather than constantly taking these people by, so to speak,  
17 surprise? I'm worried about what's happening on the Internet.  
18 I'm very concerned about it.

19 And I'm very concerned about utilizing the prisons as  
20 a mental institution. Prisons aren't mental institutions. But  
21 we're turning them into that. What Mr. Darby needs is  
22 tremendous amounts of counseling. And there's no question about  
23 it. There's lots of problems coming from childhood on. And of  
24 course I didn't see any of that in the guidelines. I don't see  
25 any of it counted at all. Individuals aren't. They're saying

1 we treat everybody the same. I worry about that. Everybody  
2 isn't the same. Each individual comes as a distinct person, and  
3 now we're treating them not as distinct people, but the  
4 guideline seemingly say that everybody is equal. Everybody  
5 isn't equal. Otherwise we'd all be -- well, you could make  
6 everybody equal by reducing everybody to the lowest standard,  
7 because you can't make somebody without intelligence have  
8 intelligence. So if you're going to make everybody equal, we  
9 reduce everybody to the lowest standard. And that's just not  
10 done.

11 I'm questioning all of this because I'm going into the  
12 factors that are required by Title 18, Section 3553.

13 I think the guidelines are excellent in some cases.

14 The question of avoiding unwarranted sentencing  
15 disparities. Have you looked into that at all, Ms. Fisher?

16 MS. FISHER: Well, Your Honor, I think abiding by the  
17 guidelines helps to keep sentences appropriately similar across  
18 the country.

19 THE COURT: So the guidelines then, you don't look at  
20 any of the characteristics of each defendant, you just say "This  
21 is"? It's a science, isn't it?

22 MS. FISHER: No, Your Honor. The guidelines are used  
23 in conjunction.

24 THE COURT: It's a science. What do we need a judge  
25 for? We shouldn't have judges anymore. We can just punch in

1 the computer, it punches out an answer.

2 Ms. Fisher, what I'm trying to get at is besides  
3 exactly the crime he has committed, what other factors do you  
4 feel should be considered? He's committed the crime. There is  
5 no question about that. Then what other factors are there to  
6 consider?

7 MS. FISHER: Your Honor, all of the factors under  
8 3553(a) can be considered by Your Honor in conjunction with the  
9 guidelines. And as I stated, the guidelines are simply a good  
10 place to start, and there is a range given by the guidelines  
11 that Your Honor can look at. And all --

12 THE COURT: I've got to stick within the guidelines?

13 MS. FISHER: No, Your Honor. They are advisory.

14 THE COURT: Do you think they're mandatory? Do you,  
15 Ms. Fisher?

16 MS. FISHER: They are advisory. We are just  
17 requesting a sentence within the guideline.

18 THE COURT: Ms. Fisher, I've argued too much with you.  
19 I'm not criticizing you in any way. I'm trying to get to you,  
20 to tell you what some of the important factors are in sentencing  
21 and why one can't just go by the guidelines, and why they're  
22 purely advisory.

23 The addition -- you know, you begin to wonder how the  
24 crime could have been committed without adding the necessary  
25 additional points that keep coming in in these guidelines. The

1 question really is what is a sentence sufficient but no greater  
2 than necessary in this case, and that's what really is the  
3 important factor.

4 In any event, I thank you, Ms. Fisher. I am in no way  
5 trying to criticize you. In any way. I'm just trying to  
6 educate you in the factors that have to be considered other than  
7 the commission of the offense itself.

8 There's no question that the viewing of this type of  
9 pornography causes people to produce it. The fact is that,  
10 again, I feel that we're inadequately dealing with the problem  
11 when we should require the internets themselves to provide  
12 something. It's interesting, because you couldn't print it in a  
13 newspaper, but you can put it on the Internet. The newspaper  
14 people would be punished if they allowed it to be printed. The  
15 Internet people are not. The question then becomes how has it  
16 come about? It's because there's no education as to the  
17 deterrents that are involved in it. Maybe it's just me.  
18 Certainly it's difficult to get to it, and you've got to be very  
19 proficient in the utilization of the Internet to get to it. But  
20 you can. But now since we all now know that the greatest income  
21 on the Internet is from pornography, just a question of where is  
22 Sodom and Gomorrah. Are we living in it? Isn't it odd? I  
23 shouldn't wax on.

24 Thank you, Ms. Fisher.

25 MS. FISHER: Thank you, Your Honor.

1 THE COURT: Let me hear from Mr. Cejas.

2 All right, Mr. Cejas. There's no question that Mr.  
3 Darby needs counseling.

4 MR. CEJAS: Yes, sir.

5 THE COURT: Severe counseling.

6 MR. CEJAS: Yes, sir, Your Honor. And I think all our  
7 position is is that the 60-month sentence in this case is  
8 sufficient, but not greater than necessary. He's charged with  
9 receipt, he pled to receipt, that's what was offered to him, and  
10 he accepted that, and pled guilty. He's never denied his  
11 involvement. When he first met with the authorities he was open  
12 and honest, gave a full confession. He was open and honest  
13 throughout the process.

14 I think when the Court looks at -- Your Honor's  
15 already discussed his history and characteristics, so I won't go  
16 in any great detail there other than to note that he comes from  
17 a solid family. He still has his family's support. His mother  
18 and father could not be here today, they live quite a distance,  
19 in Tennessee. His father recently had some medical issues which  
20 made it further more difficult for them to travel. But in any  
21 event, they fully support their son. They're not happy -- and  
22 they have expressed that to him -- with what's occurred, but  
23 they fully support him, and that's where he would be going when  
24 he is ultimately released. I think when the Court looks at --

25 THE COURT: Isn't any question, Mr. Cejas, that he has

1 some problems.

2 MR. CEJAS: Yes, sir.

3 THE COURT: And there's no question about that. The  
4 individual did well in college. He attended for five  
5 consecutive years.

6 MR. CEJAS: Yes, sir.

7 THE COURT: But he left without completing anything  
8 nor in finding any major. It indicates that something's  
9 missing.

10 MR. CEJAS: Well, I think that that started to rear  
11 its head, Your Honor, I think some of the things that he went  
12 through in grade school, middle school, I think, for lack of a  
13 better word, maybe they planted the seeds of severe depression  
14 and some of the issues that later surfaced while he was in the  
15 Navy which led to the attempted suicide, the suicidal ideations,  
16 hospitalizations, all before he was ever charged with these  
17 things. I'm sure in looking back in his life, I'm sure that he  
18 would have chosen something other than the nuclear program,  
19 because that program in and of itself is extremely difficult,  
20 it's an extremely rigorous program.

21 THE COURT: What's so odd is we're beginning to get  
22 people in that program who end up with the problems of  
23 pornography. I'm wondering what is the connection.

24 MR. CEJAS: I have no idea.

25 THE COURT: I'm sure he ins as aware of it as I am,

1 but...

2 MR. CEJAS: Yes, sir.

3 But lastly, Your Honor, I think one of the things to  
4 look at, which I've listed in our position paper, is the need to  
5 avoid unwarranted sentencing disparity. In all of those cases  
6 that I cited, they're very similar to Mr. Darby. He's a young  
7 man, zero criminal history points, solid family, no history of  
8 abusing children whatsoever, solid work history, although he did  
9 have the issues with depression and hospitalization, I believe  
10 that 60 months under these circumstances is sufficient. The  
11 difference between those individuals is that they pled to  
12 possession. I think you can make an argument that anyone who  
13 possessed it, received it, because you have to receive it,  
14 obviously, before you possess it. So I think 60 months in this  
15 case is sufficient. That would give him the time -- I think  
16 that would meet --

17 THE COURT: Well, now the authorities send these  
18 individuals to a particular institution where he can receive the  
19 counseling. That's absolutely essential.

20 MR. CEJAS: Yes, sir. We are asking --

21 THE COURT: And I'm well aware of that, Mr. Cejas.  
22 I'm well aware of it. I'm very concerned about where we're  
23 going, and I understand the problems. And it's true that the  
24 pornography cases have now come in to a question of what in  
25 Title 18 Section 3553 is called the disparity of sentences.

1 There has to be disparity in some sentences. A sentence of one  
2 person to one day in jail might be a disaster for the  
3 individual.

4 MR. CEJAS: Yes, sir.

5 THE COURT: Whereas somebody else may laugh at it.  
6 You know? Just laugh.

7 MR. CEJAS: That's true, Judge.

8 THE COURT: As you increase this constantly, you  
9 change the participation of the individual. And what we're  
10 doing with the guidelines, they have -- unfortunately they're  
11 not a science.

12 MR. CEJAS: No, sir.

13 THE COURT: Somehow or another, people have figured  
14 out that this is some sort of science. So I'm not sure  
15 sentencing will ever be a science. There are people constantly  
16 adjusting it. You know, I laughed, I said the Tax Code used to  
17 be complex, you know? Now they're trying to make the sentencing  
18 guidelines as complex as the Tax Code.

19 MR. CEJAS: Yes, sir.

20 THE COURT: You go back and forth. It shows that  
21 bureaucracy is never satisfied.

22 MR. CEJAS: I agree, Judge.

23 THE COURT: Under any circumstances, you'll never  
24 certify that this is final. Nothing is ever final in  
25 bureaucracy. Constant improvements. They have been improving

1 the Federal Rules ever since I've been here. In fact, the  
2 reason for the improvement, Mr. Cejas, is interesting. They  
3 were improving the Federal Rules so that justice could be  
4 speedier. I remember we used to try cases, from filing to  
5 trial, in five months. They adopted the Rules to make them  
6 faster. And so we could try a case in seven months. And then  
7 they adopted some more changes to make them even faster, and  
8 then we got to nine months. And they adopted some more rules  
9 and they will make them even faster, we'll get to 11 months. I  
10 liked it when the Rules were one page.

11           You know, it makes everybody the same. Just remember,  
12 when we make everyone the same, we reduce everyone to the lowest  
13 standard, not the highest standard.

14           MR. CEJAS: Yes, sir.

15           Your Honor, lastly what we would ask is that the Court  
16 recommend that he be confined as close to Tennessee. There are  
17 programs --

18           THE COURT: I'm going to recommend that he be confined  
19 to an institution where he can receive the counseling that I  
20 think is necessary.

21           MR. CEJAS: I understand that, Your Honor. I would  
22 say that Butner --

23           THE COURT: And I'm not going to worry about whether  
24 it's close to Tennessee or close to Virginia or close to  
25 anything. I'm going to worry about him getting appropriate

1 counseling, because I'm convinced that this young man needs  
2 counseling.

3 MR. CEJAS: I understand that, Your Honor. I guess  
4 the only, I would just say that Butner has all of the programs  
5 that he could benefit from, and that's closer. There's also  
6 Devens, as the Court is aware. It's a little further. But we  
7 just --

8 THE COURT: Appreciate that, Mr. Cejas. I'm not going  
9 to try to tie --

10 MR. CEJAS: I understand Your Honor.

11 THE COURT: -- the hands of the prison authorities in  
12 this case. You know, the Bureau of Prisons has a tough row to  
13 hoe. And I just don't want him in a normal institution, because  
14 it's obvious to me, at least, and to most other people who have  
15 studied it over a period of time, prisons are generally run by  
16 the prisoners, not by the warden, and the wardens do the  
17 administration. The society is controlled by the prisoners.  
18 It's a bad feature, but it happens.

19 Anyhow, we'll see where we go.

20 MR. CEJAS: Yes, sir.

21 THE COURT: All right. Mr. Darby, if you would come  
22 forward?

23 Mr. Darby, as I've told you, you have a right to make  
24 a sworn or an unsworn statement before sentence is imposed.

25 THE DEFENDANT: Yes, Your Honor. All I want to say is

1 I just apologize for the mistakes I've made and any of the pain  
2 that I've caused. That's all.

3 THE COURT: I've gone over the advisory sentencing  
4 guidelines. There's no question Ms. Fisher is quite correct in  
5 that the guideline range in this case is 97 to 121 months.

6 I've also looked at the questions that are raised by  
7 Title 18, Section 3553. And one of the major portions there,  
8 the question of why the guidelines were adopted. I like to  
9 think back at that time and prior to that time. When they were  
10 adopted, they called it the Comprehensive Crime Control Act of  
11 1984, but it really didn't come into effect until 1986, in  
12 reality, when one could get Strom Thurmond and Bobby Kennedy to  
13 agree on anything, and this is what they agreed on. You realize  
14 that we got both ends of the spectrum agreeing on a particular  
15 bill. And somehow or another, it's taken on the view that it's  
16 scientific. Well, it isn't scientific. We've got to consider  
17 the characteristics of each defendant. Considering that, and  
18 considering the necessity for uniformity of sentencing, and  
19 taking into consideration all of the factors that are set forth  
20 in Title 18 Section 3553, I've come to a conclusion a little  
21 different than that of the guidelines.

22 Pursuant to the Sentencing Reform Act of 1984, it is  
23 the judgment of the Court that the defendant, Gerald Andrew  
24 Darby, is hereby committed to the custody of the United States  
25 Bureau of Prisons to be imprisoned for a term of 60 months.

1           The defendant is remanded to the custody of the United  
2 States Marshal.

3           Upon release from imprisonment, the defendant shall be  
4 placed on supervised release for a term of 15 years.

5           Within 72 hours of release from the custody of the  
6 Bureau of Prisons, the defendant shall report in person to the  
7 probation office in the district to which the defendant is  
8 released.

9           The defendant shall refrain from any unlawful use of a  
10 controlled substance, and submit to one drug test within 15 of  
11 release on supervised release and at least two periodic drug  
12 tests thereafter, as may be directed by the probation officer.

13           While on supervision, the defendant shall not commit  
14 another federal, state or local crime, shall not unlawfully  
15 possess a controlled substance, and shall not possess a firearm  
16 or a destructive device.

17           The defendant shall comply with the standard  
18 conditions that have been adopted by this court for probation  
19 and supervised release, but also comply with the following  
20 additional conditions:

21           If the defendant tests positive for illicit substances  
22 or alcohol during his period of supervised release, he shall  
23 participate in a program approved by the United States Probation  
24 Office for substance abuse, which program may include  
25 residential treatment and testing to determine whether the

1 defendant has reverted to the use of drugs or alcohol, with  
2 partial costs to be paid by the defendant, all as may be  
3 directed by the probation officer.

4           The defendant will abstain from alcohol during his  
5 period of supervised release unless he has pre-approval  
6 therefrom the probation officer.

7           The defendant shall waive all rights of  
8 confidentiality regarding substance abuse treatment or any  
9 psychological treatment in order to allow the release of  
10 information to the United States Probation Office and to the  
11 Bureau of Prisons, and authorize communication between the  
12 probation officer the Bureau of Prisons and any treatment  
13 provider.

14           The defendant shall, while incarcerated, it's  
15 recommended that he participate in a program to include  
16 psychosexual evaluation and sex offender treatment while  
17 incarcerated.

18           While on supervised release, the defendant shall  
19 participate in a program approved by the United States Probation  
20 Office for mental health treatment, to include psychosexual  
21 evaluation and sex offender treatment. The costs of these  
22 programs are to be paid partially by the defendant as may be  
23 directed by the probation officer.

24           The defendant shall waive all rights of  
25 confidentiality regarding sex offender mental health treatment

1 to allow the release of information to the United States  
2 Probation Office and the Bureau of Prisons and authorize  
3 communication between the probation officer and the Bureau of  
4 Prisons and any treatment provider.

5 The defendant shall submit to polygraph testing as  
6 directed by the United States Probation Officer as part of the  
7 defendant's sex offender therapeutic program. The costs of the  
8 testing to be paid partially by the defendant, all as directed  
9 by the probation officer.

10 The defendant shall submit to penile plethysmograph  
11 testing or Able assessment for sexual interest as directed by  
12 the United States probation officer as part of his sex offender  
13 therapeutic treatment. The costs of the testing are to be paid  
14 partially by the defendant as may be directed by the probation  
15 officer.

16 The defendant shall not utilize any sex-related adult  
17 telephone services, websites or electronic bulletin boards. The  
18 defendant shall submit any records requested by the probation  
19 officer to verify compliance with this condition, including but  
20 not limited to credit card bills, telephone bills, cable and  
21 satellite television bills, or any type of bill that may be  
22 provided by the provider of such information.

23 The defendant shall not have any access to or possess  
24 any pornographic material or pictures displaying nudity or any  
25 magazines using juvenile models or pictures of juveniles. The

1 defendant shall have no contact with minors unless supervised by  
2 a competent, informed adult, approved in advance by the  
3 probation officer.

4 The defendant shall not engage in any employment or  
5 volunteer services that allow him access to computers or minors  
6 without the specific permission of the probation officer.

7 Pursuant to the Adam Walsh Child Protection and Safety  
8 Act of 2006, the defendant shall register with the state sex  
9 offender registration agency in any state where the defendant  
10 resides, works and attends school according to federal and state  
11 law, as may be directed by the probation officer.

12 Pursuant to that the Adam Walsh Child Protection and  
13 Safety Act of 2006, the defendant shall submit to a search of  
14 his person, property, house, residence, vehicle, papers,  
15 computer, and any electronic communications or data storage  
16 devices or media and effects at any time by any law enforcement  
17 or probation officer with reasonable suspicion concerning  
18 unlawful conduct or a violation of a condition of supervision  
19 upon prior notification to and approval by the Court, or with a  
20 warrant.

21 The defendant shall not possess or use a computer to  
22 access any online computer services at any location, including  
23 employment, without the prior approval of the probation officer.  
24 This includes any Internet service providers, bulletin board  
25 systems or any other public or private computer network.

1           The Court has considered the defendant's net worth and  
2 zero liquid assets, his lifestyle and financial needs as  
3 reflected in the presentence report, his earning potential, and  
4 the lack of dependents relying on his support. The Court finds  
5 the defendant is not capable of paying a fine, but must pay a  
6 special assessment in the amount of \$100.

7           No restitution. No fine.

8           The special assessment shall be due in full  
9 immediately. Any balance remaining unpaid on the special  
10 assessment at the inception of supervision shall be paid by the  
11 defendant upon supervision, period.

12           The defendant shall notify the United States Attorney  
13 for this district within 30 days of any change of name,  
14 residence or mailing address until the special assessment  
15 imposed by this judgment is fully paid.

16           Anything further need be done in this matter, Mr.  
17 Cejas?

18           MR. CEJAS: No sir, Your Honor.

19           THE COURT: Anything else, Ms. Fisher?

20           MS. FISHER: Yes, Your Honor. At this point the  
21 government moves to dismiss the remaining counts of the  
22 indictment.

23           THE COURT: The remaining counts of the indictment to  
24 which the defendant has not pled guilty are hereby dismissed.

25           MS. FISHER: And Your Honor, also, there is a

1 forfeiture order that was re-signed today. It was signed  
2 originally at the change of plea, but it was not filed. It's  
3 been signed today, and I believe given to the Court.

4 THE COURT: Anything else?

5 MR. CEJAS: No, sir.

6 THE COURT: Anything else, Ms. Fisher?

7 MS. FISHER: No, Your Honor.

8 THE COURT: Thank you.

9 (Whereupon, proceedings concluded at 10:50 a.m.)  
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CERTIFICATION

*I certify that the foregoing is a true, complete and correct transcript of the proceedings held in the above-entitled matter.*

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Paul L. McManus, RMR, FCRR

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Date